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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Mara Q. Devitt

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EXAMINER

FISCHETTI, JOSEPH A

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/910,159

Applicant(s)

DEVITT ET AL.

Examiner

Joseph A. Fischetti

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-39 and 41 is/are pending in the application.
- 4a) Of the above claim(s) 12-35 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11, 36, 39 and 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5-11, 36, 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1. There are no steps established for providing the recited effect of selecting clothing having the largest total degree of matching. In essence, this phrase recites nothing more than a desired effect.

2. There is no antecedent basis for "attribute pair".

3. "Largest total degree" is a relative term; larger than what by comparison?

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 6, 9, 10, and 11, 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Rose in view of Quartararo Jr.

Rose discloses a method of identifying clothing combinations, the method comprises:

(a) identifying a first article of clothing and a search request (col. 8 lines 48-51 discloses the user selecting START AGAIN which is read as a search request and then selecting an article of clothing from one of a plurality of such articles; (b) identifying a set of rules for selecting clothing combinations wherein the identification of the set of rules identifies

one of a plurality of sets of rules (col. 8 lines 52 et seq. selection of the fashion reflection submenu is read as identifying since it must be identified before it is selected and since each body type has defined rules for dos and don't each tier of dos and don'ts is read as a set of a plurality of sets of rules for each body type) ; (c) transmitting the identification of the first article of clothing, the search request and the identification of the set of rules to a rules engine (Fig. 5 illustrates the result of such a transmission which occurs once the user inputs); and (d) receiving an identification of a second article of clothing that satisfies the set of rules (see cols 9 and 10 under Do's to wear).

However, Rose fails to disclose in step (a) using a tag embedded in the material of an article of clothing to identify and generate a search request. However, Quartararo et al. do disclose sewing the tag within the garment col. 3 line 56, i.e. embedding to identify it. It would be obvious to modify the identification step in Rose to include the RF ID tag of Quatararo et al. to identify the article of clothing the motivation being to give the user the advantage of picking an actual clothing article and automatically causing the computer to initiate the identify and search initiate step.

Regarding the newly presented limitations of claim 1, insofar as they can be understood, the attribute pair in Rose is read as the pair of selecting a clothing item and body type see col.8 lines 48 et seq. which produces the largest total matching as defined by the system parameters.

Re claim 2: wherein the set of rules includes rules for permissible color combinations see col. 9 line 63, col. 10 lines 36, 23-26.

Re claim 3: wherein the set of rules include rules for permissible pattern combinations see col. 9 line 30, col. 10 lines 5,14.

Re claim 10: Quartararo discloses using the tag to identify among other things, the owner of the clothing article, it is obvious to modify the Rose to use a user ID this would allow mixing of articles of different owners in a single closet.

Re claim 5: selecting the first article of clothing from a selection of clothing in a brick and mortar store (col. 1 lines 10-50 discuss resolving problem of trying on in department stores).

Re claims 6, 9: selecting the first article of clothing from a selection of clothing offered for sale by a web site (col. 1 lines 10-50 discuss resolving problem of trying on in internet stores).

Re claim 11: receiving the identification of a third article of clothing that satisfies the search request is read as the third of the plural suggestions set forth under the categories DO WEAR in cols 9 and 10.

Re claim 39: whether the tags in Quartararo et al. are sewn in an enclosure is deemed to be the equivalent of woven into the material since it is fully incorporated by the material as would be the case with a woven embodiment.

Re claim 41: Rose answers the presenting plural search request types by the plural submenus found in Rose (col. 8); the user inputs a selected search request ORDER /START AGAIN and the system determines the associated set of rules, START AGAIN generates body type menu.

Claims 1-3,5-11, 36, 39 are rejected under 35 U.S.C. 103 as being made obvious by Suzuki et al. in view of Quartararo et al.

Suzuki et al. disclose: a) identifying a first article of clothing and a search request (clothing article is taken into fitting room and the RF tag attached to the clothing identifies the article and search engine 40 starts request); (b) identifying a set of rules for selecting clothing combinations wherein the identification of the set of rules identifies one of a plurality of sets of rules (col. 6 lines 50 et seq. engine 40, engine 40 comprises

similarity analysis module, a color analysis module and a brand analysis module, given that rules exist for each module, and a rule controlling for the involved module taken with those controlling for the other modules are read as the making one of a plurality of sets); (c) transmitting the identification of the first article of clothing, the search request and the identification of the set of rules to a rules engine (RF tag transmits the item taken into fitting room and identifies rules based upon PLU table); and (d) receiving an identification of a second article of clothing that satisfies the set of rules (see col. 7 recommendation list 54 includes products with a similar style). However, Suzuki et al. fail to disclose embedding an ID tag in the material of the clothing article. However, Quartararo et al. do disclose sewing the tag within the garment col. 3 line 56, i.e. embedding. It would be obvious to modify the Suzuki et al. to embed the RF tag of Suzuki et al. into the article of clothing with which it is associated the motivation being the ability to repeatedly identify the article of clothing even without any discernable tag.

Regarding the newly presented limitations of claim 1, insofar as they can be understood, the attribute pair in Suzuki is read as the pair of similarity and brand analysis modules, see col. 6 line 63 which produces the largest total matching as defined by the system parameters.

Re claim 2: wherein the set of rules includes rules for permissible color combinations (module 42 analyzes color)

Re claim 3: wherein the set of rules include rules for permissible pattern combinations (similarity module 42 matches same style e.g. patterns).

Re claim 5: selecting the first article of clothing from a selection of clothing in a brick and mortar store (Suzuki discloses a retail store)

Re claims: 6, 9: selecting the first article of clothing from a selection of clothing offered for sale by a web site and the first article of clothing is not owned by the user but rather by the store.

Re claim 7: the first and second articles of clothing are owned by the same person (Quartararo teaches owning all clothing by one person to identify that person). The motivation is the same for this as it is set forth above.

Re claim 8: Official notice is taken regarding the old and well known practice of trying to match one's clothes with an article of clothing that one is attempting to purchase. It being understood that the second article of clothing being owned by the store is not part of the user's current wardrobe.

Re claim 10: Quartararo discloses using the tag to identify among other things, the owner of the clothing article, it is obvious to modify the Rose to use a user ID this would allow mixing of articles of different owners in a single closet.

Re claim 11: receiving the identification of a third article of clothing that satisfies the search request Suzuki in cols. 9 and 10 discloses successive clothing articles being fitted including at least three fittings.


Re claim 36: the trial history 70 in Suzuki is read as an editing the set of rules as the trial history is updated by different clothing and hence the rules are changed by new habits.

Re claim 39: whether the tags in Quartararo are sewn in an enclosure is deemed to be the equivalent of woven into the material since it is fully incorporated by the material as would be the case with a woven embodiment.

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Re claim 41: Official Notice is taken of the old use of presenting menu options to a users and having the user select an option and then based on this selection, applying a given executable set of rules. To use this in Suzuki would give the customer further control of fitting options.

Any inquiry concerning this communication should be directed to Joseph A. Fischetti at telephone number (703) 305-0731.

  
Joseph A. Fischetti  
Primary Examiner  
Art Unit 3627

**JOSEPH A. FISCHETTI  
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